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LEONID RAIHMAN

# Media Legislation, Minority Issues and Implications for Latvia

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## Introduction

The share of minorities in the total population in Latvia is one of the highest in Central and Eastern Europe. According to the Latvian Board of Citizenship and Immigration, as of January 1, 2003, ethnic non-Latvians constituted 41.6 percent of the country's population of 2.337 million. Ethnic Russians comprised 29 percent of the general population, followed by ethnic Belarussians (3.9 percent), Ukrainians (2.6), Poles (2.5), Lithuanians (1.4), and Jews (0.4). Minorities are dispersed throughout the country, but their share is generally higher in urban areas, and they are concentrated in some parts in the east of the country. Ethnic minorities actually form majorities of population in some towns, including the capital Riga (about 60%).

During the Soviet era, Latvia's population has grown largely due to a migration from other parts of the Soviet Union, thus contributing to the rise of the share of non-Latvians to 48 percent by 1989. This process caused ethnic Latvians to fear that they would become minority within their own country. The tendency was reversed after the declaration of Latvia's independence in May 1990, and from 1990 onwards the share of the ethnically non-Latvian population has been steadily on decline.

The specificity of the Latvian minority situation is in the fact that minorities are politically constituted on a linguistic rather than ethnic basis. Problems that have been subject to international scrutiny as well as of domestic policy controversies in the area of human rights and minority rights have been related chiefly to language. From this perspective, the residents of Latvia fall into two categories: a majority of Latvian-speakers (around 60 percent) and a minority Russian-speakers (approximately 40 percent). Other minority languages, although also spoken in Latvia, are of very limited usage.

The situation of linguistic minorities in Latvia, particularly of the Russian language speakers, is compounded by the persisting problem of citizenship. To date, over half of the Russian speakers living in Latvia are non-citizens. This status is a general impediment to their equal access to and exercise of their rights across all spheres of social life.

After the restoration of independence, it was necessary to establish a new public broadcasting system and ensure the development of the commercial TV and radio channels. In 1992 the Supreme Council of the Republic of Latvia adopted the Law on Radio and Television. According to this law, broadcasting in languages other than Latvian shouldn't exceed 1/3 of total airtime and films on private TV channels as well as announcements and commercials in foreign languages should be translated or should have subtitles in Latvian. In 1995 the Saeima (the Parliament of Latvia) adopted a new Radio and Television Law. Amendments regarding language issues were adopted in October 1998. Article 19 regulates the use of foreign languages:

"...

(3) Films demonstrated shall be dubbed in the Latvian language, or also with the original soundtrack and sub-titles in the Latvian language, but films intended for children shall be dubbed or with voice-over in the Latvian language.

(4) Television broadcasts in foreign languages, except live broadcasts, re-transmissions, broadcasts to foreign countries, news and language instruction broadcasts, shall have sub-titles in the Latvian language.

(5) The amount of broadcasting time in foreign languages in programs produced by broadcasting organisations shall not exceed 25 per cent of the total volume of the broadcasting time in a twenty-four hour period. This provision is not applicable to Latvian Television, Latvian Radio, cable television, cable radio, satellite television, and satellite radio."

As regards advertising, a requirement that ads must be either in Latvian language or in the language in which the program is broadcast is found in Article 22.1 of the Law.

The Radio and Television Law further requires one of the two public TV-channels and one of the two public radios to broadcast solely and entirely in the state language, while the second TV channel and the second public radio can allocate up to 20% of their airtime to programs in other languages.

At the beginning of 1990s a number of Riga-based TV programs such as NTV-5, IGE, Picca-TV, KS- video, etc., were owned by private broadcasters. Country-based television was developing as well. Public television (Latvijas Televizija) consisted of two public channels, LTV1 and LTV2 (which became LTV7 in 2003), and retained a monopoly position. In the middle of 1990s, the situation on the TV market changed significantly after LNT (Latvian Independent Television) began to broadcast nationwide, and another private broadcaster, TV Riga, was launched to cover the Riga area. For example, according to a poll of February 1997, LNT was the most popular channel with an audience of 38%. As of 2002 LNT still preserves its leading position on the market. In February 2001, the National Radio and Television Council issued a permit to the private TV broadcaster "TV3 LATVIA" to function as a 4th national network.

There are 5 public radio channels in Latvia and four of them have national broadcasting coverage. Public radio channel "Doma Laukums" broadcasts in non-Latvian languages, predominantly in Russian. Commercial, private radios first appeared in 1993. Since 1998 commercial radio station Radio SWH has national broadcasting coverage, therefore its number of listeners is potentially larger than other stations' audience. Later, another two broadcasters - Star FM and Christian Radio "Latvijas Krist?gais Radio" received license to broadcast on the whole territory of Latvia. Approximately a dozen commercial radios broadcast for Riga and the Riga region, of which the most popular are SWH, Radio Skonto, Super FM, Radio Mix FM, and Radio PIK. The local radios have a transmission radius of 15 – 25 kilometers and are focused on local audiences. Main source of income for commercial radios is advertising. Between 80-90 percent of their time is devoted to music.

According to the National Radio and Television Council, as of January 2003, licenses have been issued to 31 commercial radio broadcasters, 26 commercial TV broadcasters, and 37 cable TV and cable radio broadcasters.

Media and Language Rights in the Latvian Legal Environment

A chapter on "Fundamental Human Rights" was incorporated in the Satversme (the Constitution of Latvia) in 1998. Article 100 of the Satversme envisages that "Everyone has the right to freedom of expression, which includes the right to freely receive, keep and distribute information and to express his views. Censorship is prohibited." Article 116 defines Article 100 as "subject to restrictions in circumstances provided for by law in order to protect the rights of other people, the democratic structure of the State, and public safety, welfare and morals".

The only constitutional provision directly related to persons belonging to ethnic minorities is Article 114: "Persons belonging to ethnic minorities have the right to preserve and develop their language and their ethnic and cultural identity."

In the context of the above constitutional norms, Article 19(5) of the Radio and Television Law prohibiting the broadcasting of more than 25% of the time in non-Latvian languages by private channels is, at minimum, questionable.

At the same time, language restrictions are considered legitimate and necessary by the mainstream political community of Latvia. For example, according to Ms Anta Rugate, member of the Latvian parliament, the 25 percent limit has a positive value because "monocommunity" society in Latvia must be built on the basis of state (Latvian) language.

Only one owner of a private broadcasting company, Mr Vladimir Gurov, has attempted to use legal instruments to challenge language restrictions, and submitted a petition to the Constitutional Court. In 2000 – 2001, the National Radio and Television Council – the body entrusted with implementing the media law, several times suspended the operation of the radio station "Biznes & Baltia", which belonged to Mr Gurov. His company's radio broadcasts in Russian had allegedly exceeded the legally permissible time. On August 9, 2001, Mr Gurov, on behalf of the private media holding "Biznes & Baltia", brought a lawsuit in the Constitutional Court of Latvia, asking the Court to declare Article 19(5) of the Radio and Television Law unconstitutional. The plaintiff claimed that Section 19(5) violates a number of articles of the Latvian Constitution, in particular Article 89 (human rights protection under to the Constitution, domestic laws and international agreements), 91 (prohibition of discrimination), 100 (freedom of speech) and 114 (the rights of national minorities), as well as Article 10 and 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 19 and 27 of the International Covenant on Civil and Political Rights. On August 26, 2001 the complaint was declined on the grounds that "other remedies are not exhausted". It should be emphasized that Article 19.2(3) of the Law on the Constitutional Court allows reviewing a case before other remedies are exhausted: "If the review of the constitutional claim is of general importance or if legal protection of the rights with general legal means cannot avert material injury to the applicant of the claim, the Constitutional Court may reach a decision to review the claim (application) before all the other legal means have been exhausted". Since then, Mr Gurov has turned to the lower courts in Latvia and has lost the case in the District, Regional and Supreme Courts respectively. In April 2002, the Senate of the Supreme Court declined his complaint.

On December 12, 2002 a group of 24 MPs from the oppositional faction "For Human Rights in United Latvia" brought the case before the Constitutional Court of Latvia asking to declare Article 19(5) of the Radio and Television Law unconstitutional. The role of the Constitutional

court in creating a legal precedent on this issue may be of critical importance for the minority integration process in Latvia.

It may be inscribed in the general European tendency, according to which, "The primary achievement of constitutional courts throughout Europe has been to give a clear signal that the audiovisual media should not be treated as just another commodity: radio and TV have become central mechanisms through which we gain an understanding of ourselves and others".

The Radio and Television Law established an implementing body, the National Radio and Television Council (further - NRTC). Among its competencies, the NRTC examines broadcasting materials, establishes violations of the law and, depending on the seriousness, frequency and public danger of the violations determined, may take one of the following decisions:

i.issue a warning to the broadcasting organisation; ii.prepare a report concerning an administrative violation and send it to the Ministry of Justice for imposing an administrative sanction (hasn't been enforced at the moment of 28.02.2003); iii.annul the broadcasting permit, the re-transmission permit, the cable television permit or the special permit (license) for cable radio (radio transmission) operation; iv.suspend the operations of the broadcasting organisation; v.file an action in court to terminate the operation of the broadcasting organisation; vi.forward materials to law enforcement institutions for the bringing of a criminal action.

In the period 1996 – 2001, NRTC imposed 38 sanctions to private TV and radio broadcasters for not observing language norms, and 17 of them - for not observing the 25 percent "ceiling". More than half of these sanctions were warnings. In 8 cases NRTC decided to suspend the operations of the broadcasting organization for certain time periods, and in the case of TV Riga (43rd channel) the decision was to file an action in court aimed to terminate the operation of the broadcasting organization (March 2000).

The conflict between NRTC and TV Riga began in November 1996, when NRTC accused TV Riga that 80 percent of its broadcasting had been in Russian language. TV Riga objected that films in Russian with Latvian subtitles had to be considered as programs in Latvian. Then, in July 1999, the operation of TV Riga was suspended for one week. In June 2000 the Zemgale District Court instructed NRTC and TV Riga to conclude a friendly settlement. The members of the NRTC didn't accept the friendly settlement proposed by Aleksandr Mirlins, the head of TV Riga. Finally, after a year and a half TV Riga was renamed TV5 - Riga, and new owners started to realize a new concept of the channel.

Suspending of broadcasting, of course, caused material losses to private broadcasters. However, they rarely proceeded to calculate the exact value of those damages.

Broadcasting companies that want to broadcast in non-Latvian (mainly in Russian) constantly need to take into account language limitations prescribed by the law. This creates a number of inconveniences and difficulties. Many non-Latvian broadcasters consider these restrictions as an obstacle for normal development of their businesses. However, they have not attempted to organise to protect their rights to impart information in non-Latvian language. According to

journalist Alexandr Gilman, member of Riga City Council, non-Latvian broadcasters lack legal knowledge and their civic consciousness is limited.

### The Latvian Case in the Light of International Standards on Language Rights

This section takes a look at international human rights standards in the broad area of minority rights, with a focus on linguistic rights, and explores the degree to which they are applied or applicable to the Latvian case.

#### European Convention on Human Rights (ECHR)

Latvia ratified the European Convention on Human Rights in 1997. Article 10(1) of the Convention states: "Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers". As noted by Helen Darbishire, it is evident that the freedom to 'impart information and ideas' included in the right to freedom of expression under Article 10 of the Convention, cannot be taken to include a general and unfettered right for any private citizen or organization to have access to broadcasting time on radio or television in order to forward its opinion.

Nonetheless, the denial of broadcasting time to one or more specific groups or persons may, in particular circumstances, raise an issue under Article 10 alone or in conjunction with Article 14 of the ECHR, which prohibits discrimination on any basis in exercising a right under the convention, including on the basis of language.

Analysis of the case law under the Convention shows that the few cases that have indirect bearing to the issue examined in this paper confirm the possibility that the Latvian situation violates the ECHR.

In *Handyside v. United Kingdom* (1976), the European Court of Human Rights paid the utmost attention to the principles characterizing a "democratic society". In particular, the Court stated that, "Freedom of expression constitutes one of the essential foundations of such a society, one of the basic conditions for its progress and for the development of every man... Such are the demands of ... pluralism, tolerance and broadmindedness without which there is no "democratic society". This means, amongst other things, that every "formality", "condition", "restriction" or "penalty" imposed in this sphere must be proportionate to the legitimate aim pursued."

Apparently in the Latvian situation the support of the state language is one of the "legitimate aims" for the language restrictions on TV and radio. However, the possibility to receive information in Latvian language is obviously ensured in Latvia, therefore the usage of minority languages can't significantly threaten the development of the state language. Strengthening the position of the state language should be supported by other means, such as broadcasting important information in Latvian language on both public and private channels; organizing Latvian language education with the help of TV and radio programs, etc.

In the case "Informationsverein Lentia" v. Austria, the European Court of Human Rights noted that the undertaking of freedom of expression in democratic society "cannot be successfully accomplished unless it is grounded in the principle of pluralism, of which the State is the ultimate guarantor. This observation is especially valid in relation to audio-visual media, whose programs are often broadcast very widely."

A national survey held in November 2001 and in February 2002 found that 12% of the non-Latvians don't know Latvian at all, and 48% of the non-Latvians have an elementary level of Latvian language knowledge. In view of the existing language restrictions on both public and private broadcasting, it is obvious that the principle of pluralism in Latvia is not properly guaranteed by the state. Approximately 60 percent of the non-Latvians are denied equal access to the right to receive information, and to participate in public life. With reference to the principles of interdependency and inter-relatedness of all human rights, this disadvantage in turn has a more or less direct negative impact on accessing a broad spectrum of constitutional rights on part of language minority members.

Apart from stressing the role of the state in ensuring pluralism in society, the Court stated in its judgment in Informationsverein Lentia that "the grant or refusal of a license may also be made conditional on other considerations, including such matters as the nature and objectives of a proposed station, its potential audience at national, regional or local level, the rights and needs of a specific audience and the obligations deriving from international legal instruments". The case Verein Alternatives Lokalradio Bern v Switzerland confirms the importance of meeting the needs of a specific audience, in the following opinion of the European Commission on Human Rights: "The Commission nevertheless considers that refusal to grant a broadcasting license may raise a problem under Article 10, in conjunction with Article 14 of the Convention in specific circumstances. Such a problem would arise, for example, if the refusal to grant license resulted directly in a considerable proportion of inhabitants of the area concerned being deprived of broadcasts in their mother tongue".

Undoubtedly, minorities in some cities in Latvia, such as Riga and especially Daugavpils, where about 60 and 86 percent of the population respectively are native Russian-speakers, ought to be considered as a "specific audience" when the State regulates the language of broadcasting.

In the case Autronic AG v. Switzerland, the European Court of Human Rights noted that Article 10 applies not only to the content of information but also to the means of transmission or reception since any restriction imposed on the means necessarily interferes with the right to receive and impart information. According to this interpretation, any restriction regarding the means and forms of the distribution of information contradicts the freedom to impart information.

In my view, this position can be interpreted to imply also language as one of the main means or forms of distribution of information. Language is, philosophically, even closer interrelated with the content of information than the technical means of information dissemination. If these means (as in the case above mentioned) are seen as a part of the protected right, then language should be seen as even more legitimate part of the protected right. A similar argument is found in the Supreme Court of Canada's reasoning, in the case of Ford v. Quebec, regarding the



interrelationship between language and freedom of expression: "Language is so intimately related to the form and content of expression that there cannot be true freedom of expression by means of language if one is prohibited from using the language of one's choice."

Article 10(2) of the Convention defines that freedom of expression may be subject to restrictions or penalties if they "are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or the rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary." Taking these criteria one by one as a possible excuse for language restrictions on broadcasting in Latvia, one could argue that neither of the items of this exhaustive list is reasonably applicable in the Latvian context. Indeed, it would be unrealistic to fear that a radio station broadcasting in Riga in Russian language may threaten national security only on account of the fact that it broadcasts in Russian. Equally unrealistic is the threat to territorial integrity presented by, for example, a TV in Daugavpils transmitting in Russian, unless the content of the programs itself is secessionist. The issues of protection of morals, "reputation or rights of others", and "disclosure of information received in confidence", are dependent on the content of media messages but the language in which these messages get across to an audience is hardly of any relevance.

#### International Covenant on Civil and Political Rights (ICCPR)

The Covenant came into force in Latvia on 14 May 1992. It protects freedom of expression in Article 19: "Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice". The most basic international law provision on minority rights, Article 27, establishes negative obligation for states to abstain from interfering with language use: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group (...) to use their own language."

In the case *Ballantyne, Davidson and McIntyre v. Canada* the Human Rights Committee (the supervisory body to ICCPR) stressed that the Quebec authorities' prohibition of the use of any language other than French for commercial signs in public places was neither an appropriate nor a justifiable remedy against threats to the French culture. The Committee held that the commercial element in an expression taking the form of outdoor advertising cannot have the effect of removing this expression from the scope of protected freedom.

According to language rights expert Fernand de Varennes, to ban private broadcasting in a minority language would in addition constitute a form of discrimination and a violation of Article 27 of the ICCPR.

The Human Rights Committee under procedure of consideration of reports submitted by state parties (Article 40 of the Covenant) in its comments expressed concern over the inadequate protection of the rights of ethnic, religious and linguistic minorities in the Dominican Republic. In particular the Committee stated: "In this regard, the Committee notes that the prohibition of

broadcasting in a language other than Spanish is not in conformity with article 19 of the Covenant." The Committee recommended that the Dominican Republic take further steps for the elimination of discrimination concerning ethnic, religious and linguistic minorities.

#### Framework Convention for the Protection of National Minorities (FCNM)

The Convention entered into force in February 1998. It represents the most comprehensive multilateral instrument for the protection of minorities in Europe. The Convention does not however contain a definition of what constitutes a national minority, nor does it actually grant rights to members of minority groups, but rather imposes obligations on contracting parties.

It should be mentioned that the only legal act directly referring to national minorities in Latvia is the Law "On Unrestricted Development of National and Ethnic Groups of Latvia and the Rights to Cultural Autonomy", adopted by the Supreme Council of the Republic of Latvia in 1991. The major drawback of the Law is its purely declarative nature and the absence of a definition of national minority. No concrete mechanisms are provided for the implementation of its principles and goals.

Latvia has signed FCNM in 1995 and still remains the only EU accession country, which hasn't ratified FCNM yet. Although the Latvian parliament has not yet ratified the Convention, the current situation is covered by the 1969 Vienna Convention on the law of treaties, to which Latvia became a party on 4 May 1993. According to Article 18 of the Vienna Convention, a State is obliged to refrain from acts that would defeat the object and purpose of a treaty prior to its entry into force, when it has signed that treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval. Former OSCE Commissioner on National Minorities Mr. Max van der Stoep in a Note to Latvian Minister of Foreign Affairs in 1999 underlined the necessity to observe the Vienna Convention. Latvia arguably violated its treaty obligations under Art. 18 of the Vienna Convention when the Radio and Television Law was amended so that the airtime for broadcasting in non-Latvian language for private channels was reduced to 25% (down from 30%) in October 1998, after signing the FCNM.

Resolution 1236 adopted by the Parliamentary Assembly of the Council of Europe in January 2001 recommends the ratification of the Framework Convention by Latvia "as a matter of priority". Besides, on October 9, 2002 the Commission of the European Communities made public its 2002 Regular Report on Latvia's progress towards accession. In the field of protection of minorities, the Commission noted that the Framework Convention for the Protection of National Minorities has not still been ratified: "Latvia is urged to ratify it".

Paragraph 1 of Article 9 of the FCNM states: "The Parties undertake to recognize that the right to freedom of expression of every person belonging to a national minority includes freedom to hold opinions and to receive and impart information and ideas in the minority language, without interference by public authorities and regardless of frontiers. The Parties shall ensure, within the framework of their legal systems, that persons belonging to a national minority are not discriminated against in their access to the media."

There are no obstacles for the press to impart information in minority languages in Latvia. As regards broadcasting, Russian speakers who have no good command of Latvian are limited in their access to the media.

That this is has been more or less explicitly acknowledged by policy makers. Olgeris Tipans, Adviser to the President of Latvia, suggested that the introduction of language limitations had been expected to motivate Russian speakers to improve their Latvian language skills, but acknowledged that this has not happened. Mr Uldis Grava, Director General of the National TV, has admitted that it is hard to demand from elder non-Latvians good Latvian language skills if they didn't need it before.

Mr Janis Sikstulis, member of the National Radio and Television Council, recognised that the language restrictions on TV and radio don't fulfil its role anymore and now it's time to think about abolishing these restrictions, in the first place in the districts predominantly inhabited by national minorities.

Despite these attitudes, language restrictions remain to date and create a situation that is in stark contrast with the standards of the FCNM. Paragraph 3 of Article 9 of FCNM envisages that in the legal framework of sound radio and television broadcasting, states shall ensure, as far as possible, and taking into account the provisions of paragraph 1, that persons belonging to national minorities are granted the possibility of creating and using their own media.

According to Article 25 of the Convention, within a period of one year after the Convention entered in force, states shall transmit to the Secretary General of the Council of Europe full information on the legislative and other measures taken to give effect to the principles set out in the Convention. This requirement is the main concern of the Latvian politicians from the present ruling coalition. They expect that significant changes in the legal acts related to minority issues after FCNM ratification would be required.

Taking into account that there are other complicated and sensitive minority language problems for the society of Latvia, including, for example, the right to receive instruction in one's native language and some norms in the State Language Law, which have to be solved in the transitional period of one year after FCNM ratification, it should be recommended that language restrictions in the Radio and Television Law be abolished before FCNM ratification. The language issues in the area of education and communication with administrative authorities seem to be less likely to be resolved in the short term: political dialogue over them will be more difficult, since they touch the patriotic sensitivities of the ethnic Latvians deeper than the private media issues which are associated rather with economic enterprise.

#### European Charter for Regional or Minority Languages

The Charter entered into force in March 1998. The charter does not establish any individual or collective rights for the speakers of regional or minority languages. Nevertheless, the obligations of the parties with regard to the status of these languages and the domestic legislation, which will have to be introduced in compliance with the charter, will have an obvious effect on the situation of the communities concerned and their individual members.

Article 11 of the Charter, in particular, envisages that " the Parties undertake, for the users of the regional or minority languages within the territories in which those languages are spoken, according to the situation of each language, to the extent that the public authorities, directly or indirectly, are competent, have power or play a role in this field, and respecting the principle of the independence and autonomy of the media:

a.to the extent that radio and television carry out a public service mission: i. to ensure the creation of at least one radio station and one television channel in the regional or minority languages; or ii. to encourage and/or facilitate the creation of at least one radio station and one television channel in the regional or minority languages; or iii. to make adequate provision so that broadcasters offer programs in the regional or minority languages;"

The Parties also undertake to ensure that the interests of the users of regional or minority languages are represented or taken into account within such bodies as may be established in accordance with the law with responsibility for guaranteeing the freedom and pluralism of the media.

Latvia neither ratified, nor signed the Charter. As of January 20, 2003, 17 States have ratified and 12 States have signed the Charter.

Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

UN General Assembly adopted the Declaration in 1992. The Declaration was inspired by the provisions of article 27 of the International Covenant on Civil and Political Rights. In its Article 2 the Declaration proclaims that persons belonging to national or ethnic, religious and linguistic minorities have the right "to use their own language, in private and in public, freely and without interference or any form of discrimination." This document established no special obligations for the states, however Article 9 of the Declaration states that "the specialized agencies and other organizations of the United Nations system shall contribute to the full realization of the rights and principles set forth in the present Declaration, within their respective fields of competence."

Oslo Recommendations Regarding the Linguistic Rights of National Minorities

In the summer of 1996, the High Commissioner on National Minorities requested the Foundation on Inter-Ethnic Relations to consult a small group of internationally recognized experts with a view to receiving their recommendations on an appropriate and coherent application of the linguistic rights of persons belonging to national minorities in the OSCE region. The Recommendations elaborated in 1998 on the request of OSCE High Commissioner on National Minorities provide a useful reference for the development of state policies and laws in the area of implementing of the language rights of persons belonging to national minorities, especially in the public sphere. The chapter "Media" recommends to states to ensure that persons belonging to national minorities have the right to establish and maintain their own minority language media. It also recommends that persons belonging to national minorities be guaranteed the right to have a proportionate access to broadcasting in minority languages. In particular, Article 9 of the Recommendations directly refers to the issue of language restrictions in the law: "Persons belonging to national minorities should have access to broadcast time in their own language on

publicly funded media. At national, regional and local levels the amount and quality of time allocated to broadcasting in the language of a given minority should be commensurate with the numerical size and concentration of the national minority and appropriate to its situation and needs."

This recommendation is of critical relevance to the Latvian case. Despite the fact that the Oslo recommendations create no legal obligations for Latvian authorities, they are an indication of how the international community sees the future in this area. As long as the problem of access to broadcasting time in minority languages on public media exists in Latvia, and language restrictions for private broadcasters remain in force, responsible authorities ought to consider authoritative recommendations set out by independent bodies of experts such as the Oslo recommendations.

#### European Union's standards

The EU political criteria for membership, defined by the European Council in Copenhagen in 1993, include minority protection: "Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities".

EU Treaties do not contain norms referring directly to minority rights protection. Nevertheless, language rights, including the rights to use minorities' languages when providing services, can be considered as a subject of protection under the EEC Treaty. For example, in the case *Ministere Public v. Mutsch*, the European Court of Justice stated "in the context of a Community based on the principles of free movement of persons and freedom of establishment, the protection of the linguistic rights and privileges of individuals is of particular importance."

In particular, Article 59 of the EEC Treaty requires for member states to observe the freedom of providing services: "within the framework of the provisions set out below, restrictions on freedom to provide services within the Community shall be progressively abolished during the transitional period in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended. The Council may, acting by a qualified majority on a proposal from the Commission, extend the provisions of the Chapter to nationals of a third country who provide services and who are established within the Community".

The ruling of the European Court of Justice in the case of the *Commission of the European Communities v Kingdom of Belgium*, regarding the language of electronic media transmission, should be invoked in this context. The Belgian government's regulations prohibiting cable television companies from broadcasting on their network programs from radio or television broadcasting stations in other EU Member States, where the programs are not transmitted in the language or one of the languages of the Member States in which the station is established, was in breach of Article 59 of the Treaty. If a Flemish language commercial radio station based outside Belgium and the Netherlands claimed the rights to preserve and strengthen Flemish language in Belgium, but were not allowed to broadcast in that country, this would violate the freedom of service provision of the EC. The Court recognized that "it is important to note that the legislation

in question constitutes a barrier to the freedom to provide services in that it prevents broadcasting stations established in other Member States from having programs that are transmitted in a language other than that of the country in which they are established ...".

The ECJ, based on Art.59 of the Rome Treaty (protecting the free movement in services) held the language (and other) requirements discriminatory and illegal. If the standards that have informed the above ruling are applied to the Latvian context, the huge discrepancy in the level of protection of the freedom of services will become evident. The ruling protects services that come to an ethnic community from abroad, from stations based in third countries in which their language is not even spoken in any degree; whereas in Latvia, the Russian speaking community is restricted in receiving electronic media services in its own language even from within its own country.

It is expected that private broadcasters will have a better opportunity to protect their rights to broadcast in languages other than Latvian after Latvia's joining the European Union.

In the case of *Commission of the European Communities v Kingdom of the Netherlands*, regarding limitation of the re-transmission of advertising contained in radio or television programs broadcast from other Member States, the European Court of Justice ruled that "by prohibiting operators of cable networks established in its territory from transmitting radio or television programs containing advertisements intended specifically for the Dutch public which are broadcast by broadcasting bodies established in the territory of another Member State if certain conditions relating to the structure of those bodies or advertising contained in their programs which is intended for the Dutch public are not fulfilled, the Kingdom of the Netherlands has failed to fulfil its obligations under Article 59 of the EEC". According to Dutch legislation, advertisements are deemed to be intended specifically for the Dutch public if they were broadcast during or immediately after a portion of a program or a coherent group of programs containing Dutch sub-titles or a portion of a program in Dutch. The European Court of Justice concluded that restrictions on the broadcasting of advertisements may be imposed for an aim relating to the general interest, namely protection of consumers from excessive advertising or, in the context of a cultural policy, maintaining a certain level of program quality. However, these restrictions are not justified "since they are designed to restrict the competition to which a national body with a monopoly over the broadcasting of such advertising may be exposed from foreign operators." Latvian Law on Radio and Television establishes that advertisement inserted into a broadcast shall be in the same language as the broadcast itself or in the Latvian language. Taking into account the existence of the 25 percent "ceiling" for broadcasting in non-Latvian languages, it can be assumed that this provision essentially narrows the access for advertising companies to non-Latvian customers and, to some extent, decreases the potential audience, especially in the case of radio broadcasting. The provision about the language of advertisement aggregating with language restriction for private broadcasters causes an obstacle for advertising companies to develop their businesses.

European Council Directive 2000/43/EC on equal treatment irrespective of race or ethnicity

This Directive (widely known as the "race equality directive"), adopted in June 2000, defines direct and indirect discrimination based on racial or ethnic origin and introduces mandatory

minimum standards that the countries-candidates for EU membership must internalize prior to accession. In particular, Article 2 defines indirect discrimination, which "shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary." Analysis of this definition and of other directive provisions suggests that at present there is a severe case of indirect discrimination in Latvia against non-Latvian speaking persons in accessing their rights to public services on an equal footing with Latvian speakers. Since the Radio and Television Law, which allows on the second public TV channel only 20% percent to broadcast in languages other than Latvian, native Russian speakers are deprived of their right to equality in access to an important public service. This qualifies as indirect discrimination under the directive, insofar as members of ethnic groups such as Russians, Ukrainians, etc, are disproportionately affected by the direct discriminatory regulations based on language.

An impression of the EU as a purely economic entity is no longer an accurate one, if indeed it ever was. As regards the right of establishment and the freedom to provide services, the general principle applies: Member States may still impose linguistic competence conditions on the exercise of trades and professions. However, such requirements must also comply with the principle of proportionality (i.e. the measures adopted by a Member State must be proportionate to the objectives of the language policy pursued).

As Dr Niamh Nic Shuibhne concluded: "The recognition and realisation of minority language rights are rooted in considerations of equality and non-discrimination, effective participation and cultural democracy. This holds true at both the national and international level and applies equally to the EU as a governing entity which creates both rights and duties for those subject to its jurisdiction."

#### International Organizations Positions on Broadcasting Legislation in Latvia

One of the leading human rights organizations in the OSCE area – the International Helsinki Federation for Human Rights (IHF), in its annual reports expressed concerns about increased regulation of language use in the private sphere, which can lead to possible violations of free speech and the sanctity of private life. The 1999 IHF Report concluded that the current situation with language use in Latvia is beyond the limits established by the Oslo Recommendations regarding the Linguistic Rights of National Minorities. The 2001 IHF Report, for example, stated that "as in previous years, language policy and its effect on the rights of minorities, ... and freedom of expression remained a concern".

During a long period of elaboration of a new State Language Law, OSCE High Commissioner on National Minorities Mr. Max van der Stoep sent a number of letters with comments and recommendations to the Latvian Minister of Foreign Affairs. In particular, in the Note dated October 5, 1999, the Commissioner stressed that freedom of expression is a guarantee not only to impart and receive information and ideas of all kinds, regardless of frontiers, but also clearly guarantees the right to do it in the form chosen by the individual.

In the EU Commission's Regular Report 2000 on Latvia's Progress towards Accession, language restrictions were mentioned among other factors limiting the integration of non-citizens.

In June 2001, the Parliamentary Assembly of the Council of Europe (PACE) recommended to the Committee of Ministers of the Council of Europe to take necessary measures to ensure full implementation of the right of national minorities to create their own media in Council of Europe member states. In its motion for recommendation PACE expressed concerns that the language limitations existing in several countries, including Latvia, put disproportional burden on private media in minority languages or even effectively prevent their establishment.

With regard to private media, in January 2003 PACE adopted Recommendation 1589 "Freedom of Expression in the Media in Europe". In particular, PACE asked the Committee of Ministers of the Council of Europe to urge all European states where appropriate: "to revise ...their broadcasting legislation, to abolish restrictions on the establishment and functioning of private media broadcasting in minority languages..."

The European Commission against Racism and Intolerance (ECRI) published its second report on Latvia in July 2002. As regards public electronic media, ECRI mentioned the Law on Radio and Television, which provides that one of the two public TV channels must broadcast only in Latvian, while the second may allocate only up to 20% of air time to programs in other languages. In consideration of the large proportion of people whose mother tongue is not Latvian, ECRI recommended that, instead of a limit not to be exceeded for programs in languages other than Latvian, 20% of time should be the share to be compulsorily allocated to such programs. As regards the private electronic media, ECRI noted that the National Council on Radio and Television has frequently intervened to ensure compliance of broadcasters with the provisions stipulating that no more than 25% of airtime can be allocated to programs in languages other than Latvian. ECRI noted that the constitutionality of the provision limiting the time available for broadcasting in languages other than Latvian to 25% of the total time has been questioned, although the Constitutional Court has dismissed the application on procedural grounds. ECRI was concerned that, in practice, this provision contributes to perpetuating the situation of separate access to media and information described above, as members of non-Latvian speaking groups, and notably members of the Russian-speaking population, tend to turn to Russian-language channels originating from other countries.

#### Language Restrictions in Latvian Media Compared with Language Policies in Other Countries

In Europe, legal precedents regarding minorities and language usage similar to the ones in Latvia are rare. It would be interesting to look at the language law developments of Slovakia during the 1990s. The Slovak Law on the State Language, which went into effect in 1996, immediately sparked controversy not only because of its human rights implications, but also because of its constitutionality. The Law required strict use of Slovak language, stating that Slovak is the exclusive official language of the Slovak Republic, and cancelled a previous law, which had guaranteed ethnic minorities the use of their language in official and unofficial contacts. The Law also restricted freedom of expression by partially banning the use of languages other than Slovak in the electronic media. The Slovak Constitution (Article 6) provided that "the use of other languages than the state language in official contracts is guaranteed by law", and Article 34 of the Constitution established that "members of national minorities have the right to use their



language in official communication." Upholding an official complaint lodged by a group of opposition politicians in reaction to the state language law, the Constitutional Court ruled the Law unconstitutional in 1997. Law "On the Use of Minority Languages" entered into force in 1999.

In 2000, the Constitutional Court of Ukraine, resorting to procedural grounds, ruled the ratification of the European Charter for Minority or Regional languages by the Ukrainian parliament unconstitutional. Apparently this decision had a political background and was aimed at limiting the use of the second largest language in Ukraine - Russian.

Research into existing broadcasting legislation in EU accession countries and other states-members of the Council of Europe reveals the specificity of modern approaches to the regulation of the language of broadcasting. A few countries have established restrictions for the broadcasting in languages others than the state/official language. The establishing of percentage limits of language use for broadcasting in non-official languages is rare in European countries' legislation. Apart from Latvia, analogous restrictions were or are still in place in very few countries, such as Estonia, Moldova, and the Netherlands.

In Estonia, the only official language is Estonian. Non-Estonian speakers comprise about 1/3 of the total population. Estonia has no language restrictions for radio broadcasting. At the same time, Article 25 of the Estonian Language Act restricts broadcasting of TV programs in foreign languages without translation:

"(2) A translation into Estonian is not required for programs which are immediately retransmitted, or language learning programs, or in the case of the newsreader's text of originally produced foreign language news programs and of originally produced live foreign language programs.

(...)(4) The volume of foreign language news programs and live foreign language programs without translations into Estonian specified in subsection (2) of this section shall not exceed 10 per cent of the volume of weekly original production."

Moldavia, where ethnic Moldovans make up 65% of the total population, has imposed excessive restrictions on the establishment and operation of private radio and television broadcasting in minority languages. In the Law on Audiovisual Broadcasting of 1995 the State obliged public and private broadcasters to broadcast at least 65% of their audiovisual programs in the state language. It should be mentioned that the implementation of this provision was partially liberalized in 2000 after active involvement of the OSCE High Commissioner on National Minorities. This provision was amended and the limit of 65% is not applicable in areas compactly populated by ethnic minorities.

Obligations on public service broadcasters established in the Dutch Media Act seem to be more flexible. Article 54a of the act states: "Establishments which have obtained broadcasting time shall devote at least fifty percent of their television broadcasting time to programs originally produced in the Dutch or Frisian language." At the same time, Media Decree prescribes that public broadcasters shall devote at least 20% of airtime on television and 25% of airtime on radio to ethnic and cultural minorities.

Private broadcasters are subject to less restricted regulations: 40% of television broadcast by them must be in Dutch or in Frisian.

The power to minimize this restriction is given to the Media Authority in Article 71g of the Act: "If requested, the Media Authority may, in special cases and subject to certain conditions, set the percentages ...at a lower level for a specific commercial broadcasting establishment."

No special protection of minority languages is envisaged by the Netherlands Constitution. Recent proposals of some parliamentarians to amend the Constitution to create an obligation to promote the use of the Dutch language were rejected.

In Romania, the decision of the National Council for Audiovisual Broadcasting, adopted in 1999, made it mandatory to supply all broadcasts in minority languages, with few exceptions, with subtitles or translation into Romanian. However, this regulation was suspended very soon after it was adopted. State policy towards minorities in the area of electronic media changed and more attention was given to the needs of minorities. For example, a new Law on Radio and Television Broadcasting, adopted in 2002, requires for suppliers that retransmit program services by telecommunication networks in localities where a national minority is larger than 20% to ensure transmission services for the programs free to retransmission, in the language of the respective minority.

Until 2002 broadcasting in the Kurdish language (the language of the largest minority) was forbidden in Turkey, except for broadcasting of Kurdish music, which however was subject to arbitrary restrictions. According to Article 4 of the Law on the Establishment of Radio and Television Enterprises and Their Broadcasts, as radically amended in 2002, "radio and television programs in different languages and dialects traditionally used by Turkish citizens in their daily lives may also be broadcast." In other words, the liberty commonly known as "broadcasting in mother tongue" was included in the Law. It goes without saying that inclusion of this liberty in the legal system will not automatically bring about an efficient use of this right. The regulation to be issued and the stand to be taken by the government will play a determinant role in this matter. Given Turkey's experience in the past 20 years, however, "legal recognition" should certainly be regarded as a crucial step.

The specific case of France should also be mentioned. As is well known, French legislators traditionally don't recognize minority languages, since they reject the concept of minority as applicable to French society. This unique dissenting position which runs counter to the European legal mainstream (for which the existence of minorities is a matter of fact and not of law) is based on a different understanding of citizens' equality. While we cannot afford more detail on this controversy in the present paper, we should note that, in addition to legal principle, the significant influence of English language to some extent compels French authorities to promote the exclusiveness of the French language in the national legislation.

Having no definition of minority languages and a very specific position with regard to the protection of minority rights, France nevertheless signed the European Charter for Regional or Minority Languages in 1999.

Many states have adopted broadcasting legislation which takes into account the rights and interests of national minorities in the media. In particular, the Bulgarian Law on Radio and Television allows radio and television programs "to be transmitted in languages other than the official language if the programs are intended for Bulgarian nationals whose mother language is not Bulgarian."

The same principle is formulated in the Lithuanian Law on the State Language:

"Article 13. Audiovisual programs and motion pictures publicly shown in Lithuania must be translated into the state language or shown with subtitles in Lithuanian.

Paragraph 1 of this Article shall not be applied to teaching and special programs and ... programs ... intended for ethnic communities, and also to radio and television programs or texts of musical works of foreign states, which are broadcasted in Lithuania."

In July 2002, the Serbian Parliament adopted a new Public Broadcasting Act, which was recognized by specialists as a significant step forward in the reform of both public and privately owned broadcast media. In its Article 73 the Act contains a positive obligation for broadcasters intended to broadcast for national minorities: "Broadcasters producing and broadcasting programs for national minorities are obliged to broadcast at least 50% of their self-produced program in the total annual broadcasting time in the languages of national minorities."

According to Article 25 of the 1996 Hungarian Act on Radio and Television Broadcasting, programs presented in the native languages of national and ethnic minorities, and programs presenting the life and culture of national and ethnic minorities, may be sponsored by the state in public service and public program broadcasting. Article 26 prescribes for public service broadcasters to foster the culture and native languages of national and ethnic minorities living in Hungary, and provide information in the native languages of such groups on a regular basis. The Law especially underlines that: "This responsibility shall be fulfilled through national broadcasting or, with regard to the geographical location of the minority, through regional or local broadcasting, by broadcasting programs satisfying the needs of the minority, by providing subtitles in television programming as required, or by multi-lingual broadcasting". It should be mentioned here that 98.5 percent of Hungary's present-day population speak Hungarian as their mother tongue. At the same time, national and ethnic minorities comprise about 11% from total population.

The Macedonian Broadcasting Act in its Article 45 states that the public broadcasting enterprise, broadcasting programs on the territory of the Republic of Macedonia, features programs in the languages of the nationalities (in the Macedonian context, the term "nationality" is used as synonymous to "national or ethnic minority") in addition to programs in Macedonian. The same article provides that in the areas where minority members are a majority, the public broadcasting enterprises performing at a local level broadcast features both in Macedonian and in the languages of the "nationalities". As regards commercial broadcasting, private companies can broadcast programs both in Macedonian and in the languages of the "nationalities".

In Slovenia, special consideration for the Italian and Hungarian ethnic minorities (accordingly 0.16% and 0.43% of total population) for broadcasting purposes flows from the "special rights" of these communities provided for in Article 64 of the Constitution. The right of members of these two minorities to pursue "activities associated with the mass media" is expressly mentioned. Concretizing the constitutional provision, Article 52 of the Slovenian Law on the Mass Media states explicitly that, in the broadcasting licensing process, priority must be accorded to applicant radio or television stations "in which the majority of its programs are of its own production in the Slovene, or in the Italian or Hungarian language, in the areas of communities populated by Italian and Hungarian national minorities respectively."

In such a multicultural society as Switzerland, the freedom of language use, as well as the freedom of the media are guaranteed by the Swiss Federal Constitution. The independence of the radio and television, and the independence of program design are guaranteed by Article 93(3) of the Constitution. Accordingly no language restrictions are established for private broadcasting. Public broadcasting is realized by the Swiss Broadcasting Corporation (SBC), which is responsible for performing a national public-service task encompassing seven TV channels and 18 radio stations. SBC charter defines the number of radio and TV stations that SBC may operate in each language region. There are three radio stations in each of the German, French and Italian-speaking regions and one radio station for the Romansch-speaking (Reto-Roman) area, and one television channel for each of the German, French and Italian-speaking regions, all of which must broadcast programming in Romansch. It must be complemented with one supplementary local language television channel in each region. The charter also lays down a programming mandate, which SBC must fulfill across all its radio and television schedules:

- Promote understanding, cohesion and exchange between the different parts of the country;
- Consider the non-Swiss population and support contact with Swiss residents abroad, etc.

In Finland, Swedes, the largest minority, make up 5.8% of the total population. However, despite the not very high percentage of the Swedish population, there are two official languages: Finnish and Swedish. TV programs that broadcast for the Swedish-speaking population cover some 9% of the productions of two different state-owned TV channels; part of the TV programs is subtitled in Swedish. No special restrictions regarding language usage in broadcasting are envisaged in the legislation. The Act on the Finnish Broadcasting Company (national public service broadcasting company, operating five national television channels and thirteen radio channels) obliges public broadcasters "to treat in its broadcasting Finnish and Swedish speaking citizens on equal grounds and to produce services in the Sami and Romany languages and in sign language as well as, where applicable, also for other language groups in the country".

In neighboring Sweden, by virtue of an agreement between the state and the major public broadcasting service, television must give special consideration to linguistic and ethnic minorities so as to meet, "to the extent reasonable, in quality, accessibility and variety, the differing needs and interests of the population".

It would be beyond the scope of this paper to provide a full overview of language use in the electronic media even in European countries. With respect to Italy and the United Kingdom, we would limit our notes by referring to the general evaluation provided in a Working Paper for the UN Sub-Committee on the rights of minorities by Dr Fernan de Varennes: summarizing the issue

of public broadcasting and minority languages, he observes that the public media in big countries, like Italy and the United Kingdom, "include minority language broadcasting to a degree that more or less adequately reflects the demographic weight, needs and interests of their respective linguistic populations". Compared with other European countries, the Latvian legislation in the sphere of usage of languages other than Latvian in broadcasting seems quite unique with its restrictive character. Meanwhile, we see a tendency of a more democratic approach for broadcasting in minority languages in Europe. Latvia, however, reduced the possibility for non-Latvian languages broadcasting in 1998. In the light of the EU accession process, Latvia's current situation with the usage of minority languages in broadcasting doesn't comply with the EU requirement of respect for minorities.

### National Radio and Television Councils

In Latvia, the procedure for establishing the National Radio and Television Council is defined in Article 42 of the Law on Radio and Television:

"(1) The Council shall be established by the Saeima, electing nine members to it.

(2) The members of the Council may comprise Latvian citizens who permanently reside in Latvia. The members of the Council shall be chosen from among persons known to the public." The principal meaning of such an independent regulatory authority as a national radio and television council is that the regulator is independent from those it regulates, protected from direct political influence, and given the full ability to regulate the market by making policy and enforcement decisions.

The necessity of independence of the regulatory bodies is clearly stated in the Recommendation Rec (2000) 23 of the Committee of Ministers of the Council of Europe:

"...4. For this purpose, specific rules should be defined as regards incompatibilities in order to avoid that:

- regulatory authorities are under the influence of political power;
- members of regulatory authorities exercise functions or hold interests in enterprises or other organizations in the media or related sectors, which might lead to a conflict of interest in connection with membership of the regulatory authority."

The principles of forming of the National Radio and Television Council in Eastern European countries are different. In the

Latvian case, principle is based on the power of the ruling coalition in parliament: in fact, all members of the Council in Latvia are elected by the ruling coalition. This is not the case in most European countries.

The composition of the Councils in Eastern Europe countries is influenced by the principles of Councils' composition in Western states. In particular, in France the right to appoint Council

members is shared between parliament and president; in Germany, about 1/3 of the members of the Council are selected by political parties and the rest are nominated by civil society.

For example, the Bulgarian Council is composed of 9 members, of whom the National Assembly (Parliament) elects 5 and the President of the Republic appoints 4. The National Council in Poland consists of 9 members, of whom the Sejm appoints 4 members, the Senate appoints 2, and 3 are appointed by the President from amongst persons with a distinguished record of knowledge and experience in mass media. A more complicated composition of the Council is found in Lithuania: "four council members shall be appointed by the Republic President; four members shall be appointed by the Seimas; and the following organizations shall appoint four members as their own representatives: the Lithuanian Science Council, the Lithuanian Education Council, the Lithuanian Creative Artists Association and the Lithuanian Bishops' Conference".

Like in Lithuania, in some countries, the procedure envisages appointment of a number of specialists from the so-called "third sector". In this case non-governmental organisations acquire an opportunity to influence directly the policy in the sphere of broadcasting. For example, the Council of the Croatian National Radio and Television consists of 25 members, out of whom 22 members shall be appointed into the HRT Council, by:

- Croatian Academy of Science and Arts;
- Association of Universities;
- Central Croatian Cultural and Publishing Society;
- Croatian Emigration Institute;
- Croatian Writers' Guild;
- Croatian Journalists' Association;
- Croatian Olympics Committee;
- national minorities in the Republic of Croatia;
- Catholic Church in the Republic of Croatia;
- other religious communities in the Republic of Croatia;
- trade union associations;
- employers' associations; etc.

Before a new legislation entered in force in 1995, the same principle of wide representation in the Council was

prescribed by the Latvian Law on Radio and Television. In attempts to make the Council more responsible for its decisions, in that year legislators changed the principle of composition of the Council.

An important principle is the establishment of proportionality between different political parties. In Lithuania, where four members are appointed by the Seimas, two members are selected among candidates of opposition parliamentary groups. The same rule is observed in the Estonian Broadcasting Act - five members out of nine are appointed by the Riigikogu (Parliament) on the basis of the principle of political balance. In Greece, 9 members of the Council are appointed by the Minister of the Press and Mass Media on nominations received from political parties represented in the parliament: the ruling coalition nominates four members, oppositional parties

– four members, and the chairman of the parliament nominates the President of the Council. The Slovenian Law on Radio and Television especially notes that "five members are appointed by the Parliament, mostly respecting the proportional representation of the members of parliamentary parties".

The regulatory body can be an administrative unit under a Ministry. For example, in Finland the Finnish Communications Regulatory Authority (FICORA) is an agency in the administrative structure of the Ministry of Transport and Communications. In Sweden two administrative bodies, the Broadcasting Commission and the Radio and TV Authority are appointed by the government. In 1999, the Latvian government discussed a possibility for the Ministry of Transport to take over a part of the duties of the National Radio and Television Council (in particular the right to issue licenses for broadcasters), but the idea did not materialize.

A gender rule is included in the Irish Broadcasting Act, which requires that out of 7 members of the regulatory body (Broadcasting Commission of Ireland) not less than 3 shall be men and not less than 3 shall be women. The observance of gender equality in the composition of the Council is another indicator of democracy and non-discrimination.

A very important principle of composition of the Radio and Television Council is observing ethnic balance. According to the Broadcasting Law in Macedonia, the Council consists of 9 members elected by the parliament of the Republic of Macedonia on the proposal of the Commission on election and appointment issues at the parliament. The composition of the Council must be proportionate to the nationality composition in the Republic of Macedonia.

It has already been mentioned that in Latvia, only the Saeima's ruling coalition has the real though informal power to elect the members of NRTC. Article 42 of the Latvian Radio and Television Law defines political impartiality of the elected members of the NRTC in a very limited way: it envisages merely that not more than three members of the Council may be from the same political party. In the Latvian political context, this arrangement does not go a long way towards impartiality.

Latvian MPs have expressed their concern about the disproportionate representation in the NRTC. According to Anton Seiksts, Latvian MP, chairman of the Human Rights and Public Affairs Committee, the leading political parties often pursue partisan political interest during elections of the members of NRTC. Another MP, Mr Miroslav Mitrofanov, hopes that representation of minorities in the NRTC will help to take into account minorities' interests when distributing public funding for the electronic media.

No political party from the ruling coalition has ever officially represented minorities in the Saeima. Since the new principle of composition of NRTC was established in 1995, 23 members have been elected. Several times prominent minority representatives were nominated to the NRTC; but no member of the Russian-speaking minority was ever a member of the Council.

The importance for minorities to be represented in the national radio and television councils is emphasized in the Oslo Recommendations Regarding the Linguistic Rights of National Minorities. Article 10 of the Recommendations urges that public media editorial boards

overseeing the content and orientation of programming should be independent and should include persons belonging to national minorities serving in their independent capacity.

Electing the Council members by parliament alone is problematic for all the reasons, which make democracy, in the narrow sense of majority rule, problematic if not dangerous unless it is limited by the rule of law. Sharing the prerogative to nominate/elect members of this body is good for all those well-known reasons for which checks and balances are good in a democratic society.

One of the primary functions of the NRTC is determining the basic principles and preparing the draft state budget for financing the National Remit (the totality of state-sponsored programs and broadcasts, in compliance with the requirements of the Radio and Television Law). Once the Saeima (parliament) has adopted the budget, the Council decides on its fair allocation and signs contracts to provide the National Remit. Until recently, the distribution of the national remit was such that very few programs in non-Latvian language were financed in its framework and the amount of airtime of broadcasting in Russian was insufficient.

In May 2002, Gundars Reders, Acting Director of National TV (LTV), stated that in effect, the 20% allowed for broadcasting in foreign languages on the 2nd National TV channel are not utilised. Since the end of 2002, more programs in Russian have been financed by the National Remit.

Democratic approaches for broadcasting in different languages are implemented in Western European states and one of the examples is the Swiss experience. The Swiss Broadcasting Corporation (public broadcaster) is financed substantially by a license fee. The Swiss have considered that the public broadcasting programming budgets should be divided amongst the three public broadcasting services (German, French, Italian). The license fee is allocated as follows: 43% to broadcasts in German, 33% to those in French and 23% to those in Italian. Taking into account that Italian speakers comprise 12% of total population, such distribution, to some extent, favors the smaller linguistic populations.

The National Radio and Television Council plays an important role in the development of electronic media in Latvia. Among its other duties NRTC is obliged to formulate a national concept for the development of electronic mass media, ensuring the opportunity for high quality reception of several programs on the entire territory of the country, and providing for the development of both public and commercial broadcasting organizations. In its National Concept (2000-2002), the Council acknowledged that the volume of trans-frontier TV services had increased significantly by using satellites and due to the new technologies in this field the number of channels will become uncountable. As a matter of policy, the Concept is committed to restoring the ethnic identity of those minorities who have suffered so-called "russification" in the Soviet period. At the same time, in chapter 11.3 "Necessary changes in the legislation" there were no proposals to change language policy in the electronic media.

In January 2003 a newly adopted National Concept (2003-2005) devoted more attention to the needs of national minorities. It is one of the rare cases in Latvia when a governmental institution stands openly for finding a way to abolish discriminative restrictions. There is a recognition in the Concept that ratification of the Framework Convention for the Protection of the National



Minorities will create contradictions between obligations under FCNM and Article 19.5 of the Radio and Television Law, therefore the process of language restrictions' evaluation and preparation of relevant amendments to the law is necessary to start.

### Electronic Media and Integration of the Society of Latvia

The National Program "The Integration of Society in Latvia" was adopted in 2001 by the Latvian government. Many NGO activists have criticized the National Program for its inconsistency over the notion of "integration" across different chapters of the Program itself. The chapter devoted to media issues doesn't contain any substantive and concrete ideas on how to enhance the integrative potential of the media. The few proposals on language issues on TV and radio broadcasting in Latvia seem to be rather declarative. This is evident in the following statement: "the time devoted to transmissions in Latvian and other languages on the radio should be implemented with flexibility by taking into account the situation with respect to language usage in each particular region". According to researcher Svetlana Diatchkova, "The Integration Program, and governmental policy in general, do not pay sufficient attention to concerns of civil society and minorities in the field of minority rights, such as the need for greater access to education and electronic media in mother tongue, greater promotion of minority languages, the need for dialogue between minorities and the State, and the effective participation of minorities in public life." At the same time the National Program recognises the existence of two separate information spaces for those people who commonly speak Latvian and those who speak Russian as an important obstacle to integration.

According to Ms Vinnik, there was no TV programs for minorities and only few TV programs about minorities within the framework of various projects, financed exclusively by foreign donors. In the beginning of 2003, a new TV program about minorities, "The Native Nest", financed by the national remit, was launched. It should be mentioned that in Article 54 of the Law on Radio and Television, one of the purposes of the national remit is to promote the production of broadcasts concerning the life and culture of ethnic minorities living in Latvia.

Recent practice in Macedonia, where ethnic minorities are one third of the total population, is relevant here. Macedonian national TV launched a multiethnic channel on 20 August 2002, featuring programs in the languages of the Albanian, Turkish, Serbian, Romani, Vlach, and Bosnian Muslim minorities. The program can be received on about 85 percent of Macedonia's territory. Programs in minority languages had been broadcast previously by the second channel of Macedonian National Television five hours per day. After launching the multiethnic channel, there are 12 hours of minority-language programs, 9 hours of which are in Albanian.

One of the obstacles preventing development of the integration process is the shortage of broadcasting programs about national laws and interethnic relations, as well as the shortage of independent programs, which should be openly discussed by Russian speakers in Russian language on the National TV and Radio, as well as on commercial channels.

A number of experts expressed their concern about the shortage of non-Latvian electronic media journalists and recognized the steady decrease of qualified and well-experienced non-Latvian specialists on public and private TV channels.

Governmental policy in the question of balanced representation of minority journalists on TV and radio can be illustrated by the example of Belgium. The Belgian Consultative Council for population groups of foreign origin in the French-speaking Community (part of the Ministry of French Culture) said the media should allocate airtime to foreign communities. The Council recognized that "if we believe that they are made up of individuals and groups with their own symbols and messages that should be more widely known." The Council also stated that this could be achieved by "hiring journalists and presenters of foreign origin. It would be desirable to include people of foreign origin on programs in which members of the public take part...It should become the rule for foreigners to be included in broadcasts that mention important events and for cultural groups of foreign origin to produce their own programs."

The importance of the participation of ethnic journalists in the press and media is underlined in the special Policy Paper on Media and Minorities, which was sent by the Dutch government to the Parliament in 1999.

A number of surveys and polls in Latvia confirm that TV and radio have not yet measured up to their potential to be key factors of integration for the Latvian society; just the opposite, communities are increasingly disintegrated and segregated on the basis of their preferences of TV and radio channels.

In particular, statistical data on radio listeners illustrates strong preferences of the radio stations on the basis of language.

Latvijas Radio 2 Doma Laukums SWH SWH+  
(in Latvian) (in Russian) (in Latvian) (in Russian)  
All residents 10.4% 7.6% 9.6% 20.6%  
Latvians 20.3% 1.5% 17.3% 5.5%  
Non-Latvians 2.6% 12.4% 3.5% 32.6%  
(summer - autumn 2002)

According to the law, restrictions of 25% for broadcasting in non-Latvian languages were established for private broadcasting companies, not for channels. If one broadcasting organization has several channels it gives a possibility to use one channel for broadcasting almost all the time in a non-Latvian language in a twenty-four hour period. This scheme is employed by SWH, a company with three radio channels: SWH, SWH+, SWH Rock, and by the public broadcaster (for which language restriction is 20%) "Latvijas Radio", with its channels "Latvijas Radio 2", "Klasika", and "Doma Laukums".

The same situation with disintegrated audience still exists on the TV market. LTV1 is more popular among citizens, watched by 81%, but only 41% non-citizens watch it regularly - at least one time a week (non-citizens still constitute approx. 22 percent of the total population of Latvia and all of them are minorities' representatives). On the other hand, the leading Russian Federation television channels ORT and RTR are more popular among non-citizens: 77% of non-citizens and only 35 % of citizens watch Russian channels regularly. It should be emphasized that compared with 1997, the audience of Russian Federation TV channels has increased among both Russian speaking citizens and, especially, non-citizens; this can be

explained by the fact that these channels are widely available through cable television. Thus, the Latvian electronic media are losing many potential viewers and listeners, which is obviously contrary to the public interest from the point of view of societal integration, as well as damaging private business interests.

Since 1999, the number of Russian-speakers watching TV programs in Latvia has decreased by 6%, and the number of Russian-speakers listening to radio programs in Latvia has decreased by 7%. The rating of the 1st national Latvian channel (LTV1) significantly differs if we compare the polls in February 1997 and January 2002 – 22% and 13% respectively. It can be assumed that the decrease is not related to language issues; rather, this is a problem of the quality of the public channels. On the other hand, Reinis Aboltinsh, Director of the Department of the Integration of Society, admitted that the role of language restrictions in media preferences is not clear, and expressed doubt whether the restrictions help the integration process. Contrary to the foregoing, it is my view that language competence is the root cause of the opening gap in the media space, with a tendency to a stronger segregation on the basis of language. Understating the importance of the language in which electronic media reach and constitute their audiences does not help us contain this tendency and obstructs attempts to build a policy of integration.

Another principle hampering the integration process is established directly by the Law. Article 19(1) of the Radio and Television Law states that, apart from a few specified exceptions, each program shall be broadcast in one language, and fragments of the program which are originally in other languages shall be provided with a translation (by dubbing, voice-over or sub-titling). The popular interactive TV programs, for example, "Tema nedeli" ("The topic of the week") at TV5 channel, have met with difficulties when trying to observe Article 19(1) during live programs, because participants expressed their opinions in either Latvian or Russian languages. Such TV programs play an important role for the integration process and facilitate mutual understanding. In a multicultural society such as Latvia, rigid regulations of the type "one program – one language" do not lead to improvement of interethnic relations.

One of specific measures to promote integration would be a public discussion on possible amendments to the Law on Radio and Television. A case of Switzerland, where society participates actively in discussions on legislation drafts, could be instructive in this context. In January 2000, the Swiss Federal Council adopted a discussion paper on the main features of future legislation on radio and television and instructed the Federal Department for the Environment, Transport, Energy and Communications (DETEC) to revise the law. At the end of 2000, DETEC published an initial draft of the Law on Radio and Television and initiated a public consultation procedure. Concerned and interested parties had the opportunity to take part in the consultation until the end of April 2001. Some 200 cantons, parties, associations, radio and TV stations and other organizations took the chance to express their opinions on the draft law. In November 2001 the Federal Council discussed the results of the consultation on the bill on the Radio and Television and mandated DETEC to be informed by the public views in finalizing the draft law.

Another form of cooperation between TV viewers, radio listeners and regulatory authority was established by the Catalonia Broadcasting Council. The Council has created a special institution, an Office for the Defense of the Audience, in order to provide a direct channel for TV viewers

and radio listeners to express their suggestions, observations and complaints to the Council. Complaints can refer to all aspects concerning both programs and advertising.

The Latvian National Radio and Television Council also may play the role of mediator between public opinion and public and private broadcasters.

## Conclusions

In the last decade, since the beginning of restored independence, Latvian politicians have implemented a number of norms, which discriminated the Russian-speaking minority in Latvia. Policy makers' comments on it could be summarized as "Latvia has a specific situation, with a huge percentage of minorities".

Now, in the light of the EU accession process, the problem with observation of minorities' rights remains one of the most significant for Latvia. Besides education in secondary schools with its lack of well-organized bilingual system and certain difficulties with the implementation of the State Language Law, language policy in the area of electronic media falls short of modern and democratic principles. TV and radio in Latvia might play an important role for the integration of Latvians and non-Latvians. However, a number of obstacles stand in the way of dialogue, through the media, between the two linguistically separated segments of Latvian society.

Among the most important obstacles we should place language restrictions (not more than 25% for broadcasting in the languages others than Latvian) for private TV and radio broadcasting companies. As Latvian MP, Mr Boris Tsilevich stated, new forms of distribution of information – Internet, digital television, etc., make language restrictions on private broadcasting difficult to implement and even meaningless; additionally, the restrictions contradict international human rights, which is a second reason why they must be abolished.

Current language restrictions create a possibility to challenge the Latvian law in different international institutions, such as the European Court of Human Rights, the UN Human Rights Committee, and – in the future, following Latvia's accession to the EU – the European Court of Justice. A positive decision for the complainant in the European Court of Human Rights will bring significant fiscal losses. If in the same case the UN Human Rights Committee recognizes a violation of Article 19 (and probably Article 27 too) of the International Covenant on Civil and Political Rights, a conclusion about the necessity of the restrictions' abolishment would have to be adopted accordingly.

The fear of Latvian politicians that after a possible abolishment of these restrictions a number of non-Latvian broadcasters will start to broadcast programs in Russian language only is groundless. Each significant change in the legislation may bring unpredictable consequences. For example, as a reaction to restrictions' abolishment a number of comparatively cheap Russian electronic media materials produced abroad might appear on radio channels. At any case, non-Latvian broadcasters understand clearly who is their audience and definitely take into account the needs of ethnic Latvian listeners.

As far as Latvian legislators and some broadcasters are concerned, the abolishment of the 25 percent restriction for private broadcasters looks like a drastic measure. Meanwhile this restriction violates international human rights standards, and corresponding changes after restrictions are abolished will create a better balance on the electronic media market in Latvia. In the "triangle" of human rights values, political issues, and economic interests, human rights standards must prevail.

Another problem is the situation with the 2nd public TV channel. It was expected to serve as "integration" channel. However, until recently, neither the National Radio and Television Council (NRTC), nor the channel upper management, demonstrated a strong political will to turn the channel to a real opportunity for the integration of society. As already mentioned above, the number of Russian speakers watching TV and listening to radio programs in Latvian has been steadily decreasing since 1999.

It is obvious that the interests of integration dictate the need to increase the number of non-Latvian viewers as a matter of priority for the 2nd public channel, and some events, which happened recently, including the launch of new programs like "The Native Nest" and "The Process", could improve the situation.

Apparently the right to access to public media is based on the principle of non-discrimination. De Varennes emphasized the importance of the principle of proportionality in this case: " Minorities have the right to have their language used by public media when public authorities are involved in this area to the degree that is justified and reasonable in light of the number of speakers of a minority language in application of what I call the proportionality approach. This involves all types of public media, whether public authorities are involved in public radio or television broadcasting, printed or electronic media."

It can be asserted that non-Latvians are disadvantaged and hence discriminated due to the shortage of programs in non-Latvian language on public TV. To compensate for this disadvantage, the Russian speaking audience more and more watches Russian TV channels, and young people often prefer channels in English language. It will take a long-time to "turn back" the Russian speakers to the national channels. No doubt, such a turn would be of legitimate public interest in that it would increase the confidence of non-Latvian speakers participating in a common information space. And, needless to say, a common information space is desirable from the point of view of social cohesion.

Article 54(5) of the Radio and Television Law encourages the production of broadcasts concerning the life and culture of ethnic minorities living in Latvia. This provision, however, has a merely declarative character, and doesn't contain any obligations vis a vis the members of minorities, who pay taxes and therefore have the right to influence the development of public broadcasting, including a fair balance of programs in Latvian and non-Latvian, adequate representation during street-interviews, etc.

The Latvian approach of electing members of the Council only by Parliament without any reserved seats for the opposition results in the ruling coalition single-handedly electing the members of the Council. Within Europe, this approach is echoed only in Slovak and Czech laws,

while other countries try to distribute the power to elect/appoint members of the media council between different institutions or achieve some kind of political balance in the council. Balance in Latvian National Radio and Television Council is rather weak if at all present and as a result, it is perceived by the public as a very politicized institution.

Since mid-2002, a proposal to introduce subscription fees for the reception of public TV programs for all residents of Latvia has been on the agenda several times. In case of adopting such a measure, the changed relationship between public broadcasting and customers would additionally necessitate the restructuring of the National Radio and Television Council.

A number of international documents recommend including representatives of the national minorities in governmental structures with the purpose to balance the representation of different nationalities in public life. The experience of Eastern European countries shows clearly that Latvian legislators have acted upon a biased view on the composition of the National Radio and Television Council. Introducing the principle of ethnic/linguistic proportionality, as well as wider political representation on the NRTC, should be the main objectives in possible reforming the NRTC procedure.

The national program on integration has been severely limited by the current legislation; therefore, it does not yet enjoy a high level of confidence and support among minorities in Latvia. Integration projects on media implemented by the Society Integration Foundation of Latvia can improve interethnic relations, but they cannot influence legislators to change the law in the direction of modern and democratic principles.

## Recommendations

### Recommendations to the Saeima:

To amend the Radio and Television Law by:

Removing Article 19 (1), reading:

"(1) Each broadcast shall take place in one language — the language of the broadcast. Fragments of a broadcast which are in other languages shall be provided with a translation (by dubbing, voice-over or sub-titling). This provision is not applicable to language instruction broadcasts or performances of musical works."

Removing Article 19 (5), reading: "(5) The amount of broadcasting time in foreign languages in programs produced by broadcasting organizations shall not exceed 25 per cent of the total volume of the broadcasting time in a twenty-four hour period. This provision is not applicable to Latvian Television, Latvian Radio, cable television, cable radio, satellite television, and satellite radio."

To adopt a new text of Article 62 of the Law to the effect of the ECRI recommendation in its Second report on Latvia: "In consideration of the large proportion of non-Latvian mother tongue speakers in Latvia, ECRI considers that instead of a limit not to be exceeded for programs in languages other than Latvian, 20% of time could be considered as a share to be compulsorily allocated to such programs".

To review Article 22(1) with its requirement for advertisements to be broadcast only in the language of the respective program, or in the Latvian language, and abolish this restriction.

To amend the procedure of electing the members of the National Radio and Television Council to ensure the fair and proportionate representation of minorities.

To amend the law by introducing clear criteria for the distribution of the national remit on broadcasting to account for the needs and interests of linguistic minorities.

To include NGOs and governmental institutions in the drafting and the discussion of amendments to the Radio and Television Law regarding minority issues.

To start the procedure of acceding to of European Charter for Regional or Minority Languages.

To ratify the Framework Convention for the Protection of National Minorities.

Recommendations for the Ministry for Special Assignments for Society Integration Affairs:

To develop media forums for the mayors and political leaders in the cities with significant number of national minorities aiming to raise awareness of minority members about the importance of mastering Latvian language.

To work toward developing the public understanding of ethnic integration through thematic programming of the public TV channels.

Recommendations for the National Radio and Television Council:

To publicize regularly the Council's activity in both Latvian and Russian languages.

To improve institutional venues for Latvian residents to express their suggestions and observations to the Council.

Recommendations for public broadcasting channels:

To broadcast TV programs that are expected to have significant impact on society with subtitles in Russian language.

To encourage ethnic minority journalists to be better represented in public broadcasting.

Recommendation to the Society Integration Foundation

To open a competition for project proposals for bilingual programs in the electronic media.